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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/782,982

02/20/2004

Rafail Zubok

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7133

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EXAMINER

MILLER, CHERYL L

ART UNIT

PAPER NUMBER

3738

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/02/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/782,982

Applicant(s)

ZUBOK ET AL.

Examiner

Cheryl Miller

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-13 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-13, and 15-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant incorporated indicated allowable subject matter of claims 7 and 14 into independent claims, in order to place application in condition for allowance. However, new art was found by the examiner and is applied below. The current office action is non-final due to the new grounds of rejection.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation "said bearing mechanism" in lines 29, 31, and 32. There is insufficient antecedent basis for this limitation in the claim. Claims 16-22 depend upon claim 15 and inherit all problems associated with the claim.

### ***Claim Objections***

Claim 1 is objected to because of the following informalities: Lines 6 and 8 include typographical errors. Line 6, "first baseplate said second baseplate" should be changed to --first baseplate and said second baseplate--. Line 8, "pair or" should be changed to --pair of--. Appropriate correction is required.

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5, 6, 8-10, 12, and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Songer et al. (US 7,001,433 B2, cited previously). See figures 6a-6e, 7a-7b and col.9 line 17-col.10 line 25. Songer discloses an artificial intervertebral disc comprising a first baseplate (82) with aperture (88), a second baseplate (84) with aperture (90), a bearing mechanism (76; details seen in fig.7a, 7b) coupled to the baseplates (82, 84), comprising a semispherical bearing (outer surface of 76), pair of retaining caps (peaks and valleys of 104 and 106) connected by locking posts (108, 110), wherein the baseplates rotate relative the bearing mechanism, and wherein the rotation of the baseplates (82, 84) relative the bearing (76) extends the bearing mechanism through the baseplate aperture (at 78 and 80; see fig.6a; the bearing mechanism is partially extending through the aperture during rotation). Songer discloses the baseplates (82, 84) to be outwardly domed (see surfaces 82a and 84a in fig.6B, 6e, and 6f domed is clearly shown). Songer discloses the bearing surfaces of the baseplates to be semispherical (shown as so in fig.6E).

Claims 1-5 and 8-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Navarro et al. (US 2006/0259149 A1). Navarro discloses an artificial intervertebral disc (fig.15) comprising a first baseplate (200 or 20+200) with aperture (271), a second baseplate (300; or 30+300) with aperture (371), a bearing mechanism (motion limiting members) coupled to the baseplates, comprising a semispherical bearing (ball 91), pair of retaining caps (tops 92; or 400) connected by locking posts (80), wherein the baseplates rotate relative the bearing mechanism (some rotation is allowed, although minimal; P0019; fig.2; P0065), and wherein the rotation of the baseplates relative the bearing extends the bearing mechanism through the baseplate aperture (see figs.9, 16, 18). Navarro discloses the bearing surfaces (272, 372) of the baseplates to be semispherical (fig.9). Navarro discloses the apertures (271, 371) of the baseplates (200, 300) to be tapered (P0069) such that an outwardly facing surface has a larger diameter (see fig.9).

Claims 1-3, 5, 6, 8-10, and 12-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Biedermann et al. (US 2004/0117021 A1). Biedermann discloses an artificial intervertebral disc (figs.4, 5) comprising a first baseplate (22) with aperture (31', 32'), a second baseplate (21) with aperture (31, 32), a bearing mechanism (23) coupled to the baseplates (see fig.4), comprising a semispherical bearing (outer surface of core 23), pair of retaining caps (peak and valley of 23; OR heads of screws 34, 34') connected by locking posts (shafts of screws 34, 34'), wherein the baseplates rotate relative the bearing mechanism (P0032), and wherein the rotation of the baseplates relative the bearing extends the bearing mechanism through the baseplate aperture (seen in figures as capable of so, caps are located within apertures). Biedermann discloses the baseplates (21, 22) to be outwardly domed (P0029). Biedermann discloses the

bearing surfaces of the baseplates to be semispherical (bearing surfaces considered to be inner concave surfaces of baseplates).

*Allowable Subject Matter*

Claims 15-22 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Miller whose telephone number is (571) 272-4755. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4755. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Cheryl Miller



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